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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,711	12/30/1999	DAVID O. MCGOVERAN		8198

7590 03/28/2002
GEORGE S COLE
495 SEAPORT COURT SUITE 101
REDWOOD CITY, CA 94063

EXAMINER

BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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2163

DATE MAILED: 03/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/476,711

Applicant(s)

MCGOVERAN, DAVID O.

Examiner

Andre Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-12 have been examined.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "24" in Figure 5.
3. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Speciification

4. The disclosure is objected to because of the following informalities: The brief description of the drawings is missing. See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74 is required.

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5. The disclosure is objected to because of the following informalities:

"contradictino" on page 12, line 18 should be --- contradiction ---.

Appropriate correction is required.

6. The disclosure is objected to because of the following informalities: on page 12, line 19 the sentence ending "(22).", should have the period moved to the end of line 20 after the parenthesis bracket. If the two sentences are distinct, then the parenthesis should be removed. Appropriate correction is required.

7. The disclosure is objected to because of the following informalities: on page 16, line 21, "of or logic" should be -- of logic --. Appropriate correction is required.

Claim Objections

8. The claims are objected to because the lines are crowded too closely together, making reading and entry of amendments difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

9. Claim 7 is objected to because of the following informalities: A comma should follow "claim 6". Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 2, and 4-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 6 are rendered vague and indefinite for the use of the terminology "declarative method". A declarative method may be construed as simply an explanation of the method, which does not further limit the claim. Also, "reduction to a form of logic", is indefinite since the method is directed towards a mental set of steps, not logic in the acceptable form as found in computer applications.

Claims 4 and 8 are improper dependent claims, since they hybrid claims incorporating a computer implementation into a method. See MPEP 2173.05(p). In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990). Since the Examiner construes the claims as improper dependents, the listing of components of the apparatus (computer) are given no patentable weight, thereby making claims 4 and 8 not further limiting and duplicates of claims 3 and 7 respectively.

Claims 5, and 9-11 are rendered vague and indefinite, since they are hybrid claims incorporating a means into the method. See MPEP 2173.05(p). In

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Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990). Claims 5, 10 and 11 are also improper dependent claims, in the hybrid form.

Claim 12 recites the limitation "said particular action" and "said dynamic process" in lines 13 and 15 respectively. There is insufficient antecedent basis for this limitation in the claim.

Pertinent Prior Art

12. Even though there are numerous rejections of claims 2, and 4-12 under 35 U.S.C. 112, rendering the claimed invention vague and indefinite, to the best of the Examiner's understanding, claims 1-12 are directed towards a method and device that declares an objective of a dynamic process, states a set of rules to accomplish the objective, tests each rule against various conditions, delegates the objective, and internalizes feedback for performance and process. Based upon the Examiner's understanding of the claimed invention, the following rejections apply.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis et al, The Information System Consultant's Handbook.

As per claim 1, Davis et al disclose a method for managing a dynamic process, declaring an objective of the process as a set of measurable goals and constraints, stating as a means for accomplishing the objective, a set of rules wherein each rule contains both a condition governing that rule's actuation, and that rule's action when the condition is met, and wherein the set of rules may act in any combination, subject to the limitation that the condition of a particular rule must be met before the particular action may occur, testing each rule against conditions both internal and external, as they exist in the real world, without specifying the order of testing, unless the order becomes governed by the actuation of at least one rule whose precondition governing its actuation becomes satisfied, and actuating a rule when its condition is met, and delegating the objective as declared in a set of measurable goals and constraints, the corresponding means for accomplishing the objective stated as a set of rules, and responsibility for attaining the objective and for performing the means to a specific actor, wherein the specific actor inherits from all superior actors conditions as constraints and actions as goals, and passes upwards all actions as instantiations of conditions, and all information necessary for altering any objective when the objective does not conform to the real world (see page 50, Figure 7.2).

Claims 2 and 3 are rejected based upon the rejection of claim 1, since the method reduced to a form of logic and instantiated in a computer program are inherent in the Davis et al information system.

Claim 4 is a duplicate of claim 3 as seen in the 35 U.S.C. 112 rejection above, and is thus rejected based upon the rejection of claim 3.

As per claim 5, Davis et al disclose the additional step of internalizing feedback for both performance and process (see page 52, section 7.4.2.7). Internalizing feedback is inherent within prototype revision.

Claims 6 and 7 are rejected based upon the rejection of claim 5, since the method reduced to a form of logic and instantiated in a computer program are inherent in the Davis et al information system.

Claim 8 is a duplicate of claim 5 as seen in the 35 U.S.C. 112 rejection above, and is thus rejected based upon the rejection of claim 5.

As per claim 9, Davis et al disclose a method for managing a dynamic process, declaring an objective of the process as a set of measurable goals and constraints, stating as a means for accomplishing the objective, a set of rules wherein each rule contains both a condition governing that rule's actuation, and that rule's action when the condition is met, and wherein the set of rules may act in any combination, subject to the limitation that the condition of a particular rule must be met before the particular action may occur, testing each rule against conditions both internal and external, as they exist in the real world, without specifying the order of testing, unless the order becomes governed by the

actuation of at least one rule whose precondition governing its actuation becomes satisfied, and actuating a rule when its condition is met, and delegating the objective as declared in a set of measurable goals and constraints, the corresponding means for accomplishing the objective stated as a set of rules, and responsibility for attaining the objective and for performing the means to a specific actor, wherein the specific actor inherits from all superior actors conditions as constraints and actions as goals, and passes upwards all actions as instantiations of conditions, and all information necessary for altering any objective when the objective does not conform to the real world, and internalizing feedback for both performance and process (see page 50, Figure 7.2).

As per claim 10, Davis et al disclose using the occurrence of a logical contradiction created or encountered by the method to improve the method by identifying the two or more elements that produce the logical contradiction, and to produce a distinct new method lacking any logical contradiction (see page 52, section 7.4.2.6). This is inherently completed during the testing and evaluation phase.

As per claim 11, Davis et al disclose avoiding altering the delegation above the level in which the logical contradiction occurred (see page 580, section 7.4.2.3). The centralized management philosophy inherently avoids altering the delegation above the level the contradiction occurred.

Claim 12 is rejected based upon the rejection of claim 9, since it is the device claim corresponding to the method claim.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Ries et al, U.S. Patent No. 6,061,724 discloses a process for modeling an information system in order to measure performance and monitor service quality.

-Ries et al, U.S. Patent No. 6,055,493 discloses a process for measuring performance and monitoring service quality of an information system.

-Hudis et al, U.S. Patent No. 6,253,195 disclose constructing and using filtering trees to compare events, data, or other instances of objects defined in an object-oriented schema.

-Ekanadham et al, U.S. Patent No. 5,978,583 disclose a system and method for dynamic scheduling and allocation of resources to parallel applications.

-Zeichick discloses the challenges facing large enterprises trying to integrate large, diverse applications.


-Bidgoli, Handbook of Management Information Systems- A Managerial Perspective.

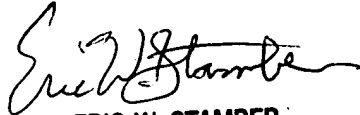
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 8-4:30pm M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications, (703) 746-7305 for informal/draft communications, and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


adb
March 25, 2002


ERIC W. STAMBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100